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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/091,126   | 03/04/2002  | William Kirby Smith  | 13515.2USII         | 5135             |
| 7590   | 03/02/2006  |                      | EXAMINER            |                  |
| HAMRE, SCHUMANN, MUELLER & LARSON, P.C.<br>P.O. BOX 2902-0902<br>MINNEAPOLIS, MN 55402 |             |                      | CHAMBERS, TROY      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3641                |                  |
| DATE MAILED: 03/02/2006  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/091,126             | SMITH ET AL.        |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Troy Chambers          | 3641                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17, 21, 25 and 26 is/are pending in the application.  
 4a) Of the above claim(s) 25 and 26 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 17, 21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Species A (Figs. 6A and 6B), claims 17 and 21 in the reply filed on 12/20/05 are acknowledged. The traversal is on the ground(s) that the amended claims were indicated as allowable. This is not found persuasive because the instant action is a new non-final Office action containing a new interpretation of previously cited prior art.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 25 and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/20/05.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 3989027 issued to Kahelin in view of U.S. 3990426 issued to Stokes and established rationales for obviousness. Specifically, Kahelin discloses a pneumatic projectile propulsion apparatus for throwing baseballs and tennis balls. Disclosed

therein is a pressure canister 18, an exit tube 60, 88; a hopper 12; and a blower 30 for supplying air to canister 24. The covered blower is capable of being unplugged and placed within the hopper for storage. Kahelin does not disclose the particulars of the canister, the barrel or the blower. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Kahelin with the particulars necessary to propel a baseball or tennis ball at the claimed speeds, since it has been held to be within the general skill of a worker in the art to select a known material or device on the basis of its suitability for the intended use as a matter of obvious design choice. For example, Stokes recognizes that various velocities can be achieved by varying the particulars of the barrel (col. 4, ll. 60, to col. 5, ll. 5). This reasoning applies equally to the canister since a desired pressure capacity proportional to the dimensions of the can. Moreover, Kahelin (as well as many other cited prior art devices) disclose a standard canister in combination with a standard blower. It would have been a matter of design choice to provide the device of Kahelin with the particulars of the blower since the applicant has not disclosed that the particulars of the blower solves any stated problems or is for any particular purpose and it appears that the invention would perform equally well with a standard blower of standard amperage.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6873.

Troy Chambers, Examiner

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A handwritten signature in black ink, appearing to read "Troy Chambers".